



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 21, 1993

Honorable Nathan B. Rheinlander
Comal County Attorney
150 North Seguin, Suite 318
New Braunfels, Texas 78130-5113

Letter Opinion No. 93-58

Re: Whether the Comal County Water
Oriented Recreation District is authorized to
waive penalties and interest due on
delinquent taxes (ID# 19913)

Dear Mr. Rheinlander:

You ask whether the Comal County Water Oriented Recreation District (the "district") is authorized to waive penalties and interest due on delinquent taxes. Apparently, the district has filed collection suits against two marinas in Comal County district court. The district's board of directors (the "board") has been involved in settlement negotiations with the defendants. The board is unsure whether the district has the authority to forgive any penalties as well as interest due on the delinquent taxes which has been demanded in both collection suits.

The district is governed by chapter 324 of the Local Government Code. Section 324.099(a) of the Local Government Code authorizes the district to levy and collect taxes and issue revenue permits. These taxes "are payable only by the purchaser or consumer of the items subject to the tax," Local Gov't Code § 324.099(c), and include a tax on the price paid for river ingress or egress, and a tax on the price paid for the rental of "any water-oriented recreational equipment," *id.* § 324.099(b)(1), (3). A person who offers such items or services must hold a revenue permit issued by the board in order to do so, and must collect the taxes imposed and "report and remit the collected taxes to the district as the district requires." *Id.* § 324.099(d).

Section 324.099 requires revenue permit holders who are delinquent in remitting taxes to pay penalties and interest as follows:

- (e) If a revenue permit holder remits taxes after the due date but on or before the 30th day after the due date, the revenue permit holder shall pay the district a penalty of five percent of the amount of taxes due. If the revenue permit holder remits the taxes after the 30th day after the due date, the person who holds the permit shall pay the district a penalty of 10 percent of the amount of taxes due.

(f) Delinquent taxes and accrued penalties draw interest at the rate of 10 percent a year beginning 60 days after the date on which the taxes were due.

Id. § 324.099(e), (f).

In Attorney General Opinion JM-74 (1983), this office considered whether an appraisal district was authorized to waive or rescind penalties and interest owed on delinquent taxes, and concluded that it was not. The conclusion in that opinion rests on the general legal principle that the imposition of penalties falls within the police power of the legislature, and that penalties imposed by the legislature may be waived only if the legislature expressly authorizes an appraisal district to do so. Attorney General Opinion JM-74 (1983) at 2 (citing *Waters-Pierce Oil Co. v. Texas*, 212 U.S. 86, 107 (1909); *First Texas Prudential Insurance Co. v. Smallwood*, 242 S.W. 498, 505 (Tex. Civ. App.--Beaumont 1922, no writ); and *Jones v. Williams*, 45 S.W.2d 130, 137 (Tex. 1931)); see also Attorney General Opinions JM-311 (1985); JM-536 (1986). The opinion also reasoned that because an appraisal district can exercise only those powers and duties which are clearly set forth in the constitution and statutes of this state, the appraisal district at issue was without authority to waive a statutory penalty in the absence of specific statutory authority. Attorney General Opinion JM-74 (citing *Tri-City Fresh Water Supply District No. 2 of Harris County v. Mann*, 142 S.W.2d 945, 948 (Tex. 1940)).

The reasoning of Attorney General Opinion JM-74 applies with equal force here. The district has no authority except that which is set forth in the constitution and statutes. The legislature has expressly provided for penalties and interest in section 324.099, subsections (e) and (f) of the Local Government Code. We are not aware of any statute which expressly authorizes the district to waive penalties and interest.¹ Therefore, we conclude that the district is not authorized to do so.²

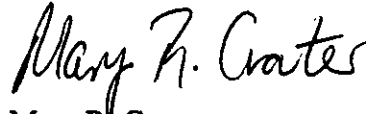
¹A letter from the district's counsel contends that the taxes at issue here are similar to sales taxes, and that because the Comptroller is authorized to waive penalties and interest under the Tax Code, the district should be able to do so as well. Because the district must have *express* authority to waive penalties and interest, we disagree. We also disagree with counsel's suggestion that because the district is not required to collect the taxes in the first place, it can waive penalties and interest. Although the district is authorized but not required to levy the taxes, see Local Gov't Code § 324.099(a) ("[t]he district *may* levy and collect taxes"), if it decides to levy taxes, it is not authorized to waive penalties and interest due on delinquent taxes.

²Because we conclude that the district is not authorized by statute to waive penalties and interest due on delinquent taxes, we do not reach the question whether article III, section 52 of the Texas Constitution would prohibit it from doing so.

S U M M A R Y

The Comal County Water Oriented Recreation District is not authorized to waive penalties and interest due on delinquent taxes.

Very truly yours,

A handwritten signature in cursive script that reads "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Opinion Committee